Euggne Kousai v Golden Land Bhd & Ors

HIGH COURT (SANDAKAN) — SUIT NO S-22-34 OF 2010
LEE HENG CHEONG JC
5 MARCH 2012

Contract — Breach of contract — Lease — Lands owned by plaintiff rented to second to fifth defendants — Execution of various leases and/or sublease agreements — Rental — Non-payment of — Whether plaintiff entitled to rescind sublease agreements — Whether lease agreements and memorandum of subleases gave fourth defendant legal interest in land — Whether plaintiff's claims statute barred — Whether plaintiff had cause of action against first defendant — Sabah Limitation Ordinance

In the early part of 1991, the plaintiff, a Dusun, met the late Yap Kiew through a mutual friend over the latter's interest in extracting timber from lands owned by the plaintiff and other natives in Penampang. At one time the plaintiff was made a chairman of the company called Tanimas Sdn Bhd. The plaintiff's eldest son was appointed a director of one of the companies dealing in fertilisers. The plaintiff who held the K lands, the A lands, the B lands and the C lands executed sublease agreements in writing in respect of all of the above lands to the companies nominated by the late Yap Kiew whose companies comprised of the second, third and fifth defendants. All the subleases were for a period of 99 years and the rent was payable in one fixed amount payable at the time the sublease agreements were executed. The terms and conditions of the various leases and/or sublease agreements were identical, except for the commencement date of the relevant leases and/or subleases and the amount of rent was fixed as a lump sum amount. The recital of the various lease and/or sublease agreements stated that the plaintiff was the registered owner of the lands. Subsequently, at the request of the late Yap Kiew, the plaintiff also executed third party memorandam of charges of the A lands and the B Lands in favour Bank Muamalat Malaysia Bhd for loans granted to the first to fifth defendants. After the death of the late Yap Kiew, the plaintiff executed further third party memorandam of charges in respect of the A lands and the B lands in favour of RHB Islamic Bank Bhd for banking facilities granted to the defendants. The second to fifth defendants were all companies managed by the late Yap Kiew. After the late Yap Kiew passed away, the second to fifth defendants were and are still managed by his children, Stewart Yap Phing Cern (DW1) and Jessica Yap Fei Chien (DW2). The first defendant was a public company listed on the main board of the Kuala Lumpur Stock Exchange and wholly owned the third, fourth and fifth defendants. Mr Stewart Yap was the first defendant's chief executive officer and Ms Jessica Yap, one of its executive

directors. Both Stewart Yap and Jessica Yap were directors of the second, third, fourth, and fifth defendants. In November 2006, the plaintiff wrote to the board of directors of the first defendant, and copied to Stewart Yap, Jessica Yap and one Luis Chin, asking for payment of the rent for his lands. After failing to receive the appropriate response, the plaintiff filed this suit against the defendants. The agreed issues to be tried were as follows: (i) whether the plaintiff was entitled to rescind the sublease agreements in respect of the A lands, the B lands and the C lands entered into between the second and fifth defendants; (ii) whether the lease agreements and the memorandum of sub-leases relied upon by the fourth defendant in respect of the K lands entered into between the plaintiff and the fourth defendant were valid to give the fourth defendant a legal interest in the K lands, or were they voidable; (iii) whether the plaintiff's claims in this suit were statute barred in accordance with the relevant provisions of the Limitation Ordinance (Sabah Cap 72)('Ordinance'); (iv) whether the plaintiff had any cause of action against the first defendant.

Held, dismissing the plaintiff's case with costs:

(1) In relation to the issue of rescinding the sublease agreements in respect of the A lands, the B lands and the C lands, this court found that the plaintiff had failed to establish his case that he was entitled to rescind the various lease agreements executed with the various defendants. The plaintiff's case, in respect of the said lands which was grounded substantially on, inter alia, the premise that he did not receive any rentals for the subleases, was without merits (see para 20).

(2) In respect of lease agreements and the memorandum of subleases of the K lands entered into between the plaintiff and the fourth defendant, this court found that the said lease agreements and the memorandum of subleases in respect of the said lands were valid and subsisting. The memorandam of sublease executed by the plaintiff in favour of the fourth defendant had been duly registered in the relevant land office. Further, at all material times, the plaintiff was aware of the defendants' occupation and development of the said lands including the K lands into oil palm plantations but there was no objection or protest from the plaintiff, nor was there any attempt to evict the defendants from the said lands (see para 39 & 44).

(3) Since the date of the sublease agreements in respect of the A lands was 2 January 1995 and the fact that the plaintiff only commenced this action on 2 June 2010, some 15 years after the cause of action arose, the plaintiff was caught by Item 93 of the Ordinance. Further, the plaintiff's claim for the recovery of immovable property was also caught by Items 108 or 112 of the Ordinance (see para 45).

(4) In relation to the B lands, the cause of action would have risen on or

about the dates of the sublease agreements that was on 16 September 1997 and 6 July 1999 respectively. The plaintiff only commenced this action on 2 June 2010, some 13 years after the cause of action arose and thus, was clearly caught by Items 93, 108 and 112 of the Ordinance (see para 45).

(5) The sublease agreements for the C lands were dated 1 January 1997, 1 May 1997 and 6 July 1999 respectively. The plaintiff only commenced this action on 2 June 2010, some 13 years after the cause of action arose and thus, was also clearly caught by the relevant provisions of the Ordinance (see para 45).

(6) In relation to the K lands, the sublease agreements were dated 1 January 1997 and 1 May 1997, respectively. Since the plaintiff contended that the defendants have failed to pay the rentals, then the cause of action would have arisen on or about the date of the agreements or soon thereafter. The plaintiff only commenced this action on the 2 June 2010, some 13 years after the cause of action arose which was also caught by the relevant provisions of the Ordinance (see para 45).

(7) Further, the plaintiff's action 'for compensation for trespass upon immovable property' for the K lands was also statute barred by the Ordinance, in particular by Item 30 of the Schedule thereto as the action was not instituted within three years from the date when the cause of action arose (see para 47).

(8) As regards the plaintiff's claim for rescission of the contract and for various declaration and damages, the said claim was also statute barred by virtue of Item 93 of the Ordinance as the action was not instituted within three years from the date when the cause of action arose (see para 48).

(9) The plaintiff's claim for the arrears of rent was statute barred by virtue of Item 95A of the Ordinance as the limitation period was six years. Since the writ of summons and the statement of claim were only filed on 2 June 2010, which was after the expiry of the six year's limitation period, this particular claim was thus statute barred. The plaintiff's action was also statute barred by virtue of Item 95 of the Ordinance as it was grounded on claims for breach of a contract in writing and the relevant limitation period was six years by virtue of Item 95 of the Schedule to the Ordinance (see paras 50–51).

(10) The first defendant had no contractual nexus or otherwise with the plaintiff. All the sublease agreements were entered into between the plaintiff and the second to the fifth defendants. The relevant lands were occupied and developed by the second to the fifth defendants respectively and the first defendant was neither in occupation nor possession of the said lands. Thus, the plaintiff had no cause action against the first defendant (see paras 59 & 61).

[Bahasa Malaysia summary

Pada awal tahun 1991, plaintif, dari suku Dusun, bertemu dengan mendiang Yap Kiew melalui seorang kawan bersama berkaitan dengan minat Yap Kiew dalam membalak daripada tanah yang dimiliki oleh plaintif dan suku lain di Penampang. Pada suatu ketika plaintif dijadikan pengerusi sebuah syarikat yang dikenali sebagai Tanimas Sdn Bhd. Anak lelaki sulung plaintif dilantik sebagai pengarah salah satu syarikat yang mengurusniagakan baja. Plaintif yang mempunyai milikan tanah K, tanah A, tanah B dan tanah C memeterai perjanjian-perjanjian pajakan kecil (sub-lease) dalam bentuk tulisan berkaitan dengan kesemua tanah dengan syarikat yang dilantik oleh mendiang Yap Kiew yang termasuk defendan-defendan kedua, ketiga dan kelima. Kesemua pajakan kecil tersebut adalah untuk tempoh 99 tahun dan sewanya harus dibayar dalam jumlah tetap yang perlu dibayar semasa penandatanganan perjanjian-perjanjian pajakan kecil tersebut. Terma-terma dan syarat-syarat berbagai perjanjian pajakan dan/atau pajakan-pajakan kecil adalah serupa, kecuali tarikh permulaan pajakan dan/atau pajakan kecil yang relevant dan jumlah sewa adalah ditetapkan sebagai jumlah bayaran sekaligus. Kata mula dalam berbagai perjanjian pajakan dan/atau pajakan-pajakan kecil yang menyatakan bahawa plaintif adalah pemilik berdaftar tanah-tanah tersebut. Kemudian, atas permintaan Yap Kiew, plaintif juga menandatangani memorandum gadaian pihak ketiga tanah A dan tanah B memihak kepada Bank Muamalat Malaysia Bhd bagi pinjaman-pinjaman yang diberikan kepada defendan-defendan pertama hingga kelima. Selepas kematian mendiang Yap Kiew, plaintif menandatangani memorandum gadaian pihak ketiga yang selanjutnya bagi tanah A dan tanah B memihak kepada RHB Islamic Bank Bhd bagi kemudahan perbankan yang diberikan kepada defendan-defendan. Defendan-defendan kedua hingga kelima adalah syarikat-syarikat yang diuruskan oleh mendiang Yap Kiew. Selepas kematian mendiang Yap Kiew, defendan-defendan kedua hingga kelima masih diuruskan oleh anak-anaknya, Stewart Yap Phing Cern (DW1) dan Jessica Yap Fei Chien (DW2). Defendan pertama adalah syarikat yang disenarai umum di papan utama Bursa Saham Kuala Lumpur dan dimiliki sepenuhnya defendan-defendan ketiga, keempat dan kelima. Encik Stewart Yap adalah ketua pegawai eksekutif defendan pertama dan Cik Jessica Yap, salah seorang daripada pengarah eksekutifnya. Kedua-dua Stewart Yap dan Jessica Yap adalah pengarah defendan kedua, ketiga, keempat dan kelima. Pada November 2006, plaintif menulis kepada lembaga pengarah defendan pertama dan dihantarkan salinan kepada Stewart Yap, Jessica Yap dan seorang yang bernama Luis Chin, meminta bayaran sewa bagi tanah-tanahnya. Setelah gagal menerima jawapan yang sewajarnya, plaintif memfailkan guaman ini terhadap defendan-defendan. Isu-isu yang dipersetujui untuk dibicarakan adalah seperti berikut: (i) sama ada plaintif berhak untuk membatalkan perjanjian pajakan kecil berkaitan dengan tanah A, tanah B dan tanah C yang dimasuki di antara defendan kedua dan kelima; (ii) sama ada perjanjian pajakan dan memorandum pajakan kecil yang

disandarkan oleh defendan keempat berkaitan dengan tanah K yang dimasuki di antara plaintif dan defendan keempat adalah sah untuk memberikan defendan keempat kepentingan yang sah dalam tanah K, atau adalah ia boleh batal; (iii) sama ada tuntutan plaintif di dalam guaman ini dihalang oleh statut berikutan peruntukan relevan dalam Ordinan Had Masa (Sabah Cap 72) ('Ordinan'); (iv) sama ada plaintif mempunyai apa-apa kausa tindakan terhadap defendan pertama.

Diputuskan, menolak kes plaintif dengan kos:

(1) Berhubung dengan isu pembatalan perjanjian-perjanjian pajakan kecil berkaitan dengan tanah A, tanah B dan tanah C, mahkamah ini mendapati bahawa plaintif telah gagal membuktikan kesnya bahawa dia berhak untuk membatalkan berbagai perjanjian-perjanjian pajakan yang ditandatangani dengan beberapa defendan. Kes plaintif, berkaitan dengan tanah tersebut yang berdasarkan secara substansialnya atas, antara lain, dakwaan bahawa dia tidak menerima apa-apa sewa bagi pajakan kecil tersebut, adalah tidak bermerit (lihat perenggan 20).

(2) Berkaitan dengan perjanjian pajakan dan memorandum pajakan kecil tanah K yang dimasuki di antara plaintif dan defendan keempat, mahkamah ini mendapati bahawa perjanjian pajakan dan memorandum pajakan kecil tersebut berkaitan dengan tanah-tanah tersebut adalah sah dan masih berkuatkuasa. Memorandum pajakan kecil yang ditandatangani oleh plaintif memihak kepada defendan keempat telah didaftarkan di pejabat tanah yang berkaitan. Selanjutnya, pada kesemua masa material, plaintif mengetahui tentang pendudukan defendan-defendan dan pembangunan tanah-tanah tersebut termasuk tanah K kepada ladang kelapa sawit tetapi tidak ada bantahan atau protes daripada plaintif, dan juga tidak ada cubaan untuk menghalau defendan-defendan dari tanah tersebut (lihat perenggan 39 & 44).

(3) Oleh sebab perjanjian-perjanjian pajakan kecil berkaitan dengan tanah A adalah 2 Januari 1995 dan fakta bahawa plaintif hanya memulakan tindakan ini pada 2 Jun 2010, lebih kurang 15 tahun selepas kausa tindakan timbul, plaintif dihalang oleh Item 93 Ordinan. Selanjutnya, tuntutan plaintif untuk mendapatkan semula harta tak boleh alih adalah juga dihalang oleh Item 108 dan 112 Ordinan (lihat perenggan 45).

(4) Berkaitan dengan tanah B, kausa tindakan timbul pada atau semasa tarikh perjanjian pajakan kecil iaitu masing-masing pada 16 September 1997 dan 6 Julai 1999. Plaintif hanya memulakan tindakan ini pada 2 Jun 2010, lebih kurang 13 tahun selepas kausa tindakan timbul dan dengan itu, jelas dihalang oleh Item 93, 108 dan 112 Ordinan (lihat perenggan 45).

(5) Perjanjian pajakan kecil bagi tanah C adalah masing-masing bertarikh,

1 Januari 1997, 1 Mei 1997 dan 6 Julai 1999. Plaintif hanya memulakan tindakan ini pada 2 Jun 2010, lebih kurang 13 tahun selepas kausa tindakan timbul dan dengan itu, adalah jelas dihalang oleh peruntukan relevan Ordinan tersebut (lihat perenggan 45).

(6) Berkaitan dengan tanah K, perjanjian pajakan tersebut masing-masing bertarikh 1 Januari 1997 dan 1 Mei 1997. Oleh sebab plaintif menghujah bahawa defendan-defendan telah gagal untuk membayar sewa, maka kausa tindakan timbul pada atau lebih kurang pada tarikh perjanjian-perjanjian tersebut atau sejurus selepas itu. Plaintif hanya memulakan tindakan ini pada 2 Jun 2010, lebih kurang 13 tahun selepas kausa tindakan timbul yang juga dihalang oleh peruntukan relevan Ordinan (lihat perenggan 45).

(7) Selanjutnya, tindakan plaintif 'for compensation for trespass upon immovable property' untuk tanah K adalah juga dihalang masa oleh Ordinan tersebut, khususnya oleh Item 30 Jadual kepadanya kerana tindakan tersebut tidak dimulakan dalam tempoh tiga tahun dari tarikh bila kausa tindakan timbul (lihat perenggan 45).

(8) Berkaitan dengan tindakan plaintif untuk pembatalan kontrak dan untuk berbagai deklarasi dan ganti rugi, tuntutan tersebut juga adalah dihalang oleh masa berikutan Item 93 Ordinan kerana tindakan tersebut tidak dimulakan dalam tempoh tiga tahun daripada tarikh bila kausa tindakan timbul (lihat perenggan 47).

(9) Tuntutan plaintif untuk tunggakan sewa adalah dihalang masa berikutan Item 95A Ordinan kerana tempoh had masa adalah enam tahun. Oleh sebab writ saman dan pernyataan tuntutan di sini hanya difailkan pada 2 Jun 2010, yang merupakan selepas tamat tempoh had masa enam tahun, tuntutan ini dengan itu dihalang masa. Tindakan plaintif adalah juga dihalang masa berikutan Item 95 Jadual kepada Ordinan (lihat perenggan 50–51).

(10) Defendan pertama tidak ada hubungan kontrak atau sebaliknya dengan plaintif. Kesemua perjanjian pajakan kecil dimasuki di antara plaintif dan defendan-defendan kedua hingga kelima. Tanah-tanah yang relevan diduduki dan dibangunkan masing-masing oleh defendan-defendan kedua hingga kelima dan defendan pertama tidak menduduki atau mempunyai milikan tanah tersebut. Oleh itu, plaintif tidak ada kausa tindakan terhadap defendan pertama (lihat perenggan 59 & 61).]

Notes

For cases on lease, see 3(3) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 3104–3105.

Cases referred to

Abdul Manaf bin Ahmad v Mohd Kamil Datuk Hj Mohd Kassim [2011] 4 MLJ 346; [2009] 2 CLJ 121, CA (refd)

Admiral Cove Development Sdn Bhd v Balakrishnan a/l Devaraj & Anor [2011] 5 MLJ 309, FC (folld)

Chai Then Song v Malayan United Finance Bhd [1993] MLJU 128; [1993] 2 CLJ 640, HC (refd)

Credit Corp (M) Bhd v Fong Tak Sin [1991] 1 MLJ 409; [1991] 2 CLJ 871; [1991] 1 CLJ (Rep) 69, SC (refd)

Great Eastern Life Insurance Co Ltd, The v Indra Janardhana Menon (representing the estate of the deceased, NVJ Menon) [2006] 2 MLJ 209, FC (refd)

PB Securities Sdn Bhd v Raja Abd Rahman bin Raja Mansor [2010] 8 MLJ 770, HC (refd)

RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd [2010] 2 MLJ 188, FC (refd)

T Thommen Thomas v John Simon & other (1957) AIR TC 153, HC (folld)

Thong Guan Co (Pte) Ltd v Lam Kong Co Ltd (No 2) [1998] 7 MLJ 720, HC (refd)

Yew Wan Leong v Lai Kok Chye [1990] 2 MLJ 152, SC (refd)

Legislation referred to

Sabah Limitation Ordinance (Cap 72) s 18, Schedule 94 Items 30, 93, 95, 95A, 108, 112

David Fung (Ryan Soo with him) for the plaintiff.
Jeyan Marrimuttu (Jimmy Chang with him) for the defendants.

Lee Heng Cheong JC:

BACKGROUND

[1] The plaintiff is a Dusun and now resides at Kampung Kibabaig, Penampang, Sabah. In the early part of 1991, the plaintiff met the late Yap Kiew through a mutual friend over the latter's interest in extracting timber from lands owned by the plaintiff and other natives in Kampung Babagon Laut, Terian, Penampang.

[2] In the year 1992, on the late Yap Kiew's advice the plaintiff quitted his job with the Malaysian Civil Aviation Department to join Yap Kiew in his timber business. At one time the plaintiff was made a chairman of the company called Tanimas Sdn Bhd. The plaintiff's eldest son Dalglish was appointed a director of one of the companies dealing in fertilisers.

[3] From the years 1994–1996, the plaintiff held the K lands, the A lands,

the B lands and the C lands, as they are defined in the statement of claim (refer to paras 9 and 15 at pp 4–11 of BP), to await the late Yap Kiew's instructions as to which companies and which specific lands, the plaintiff should grant a sublease for a rent to be agreed between the plaintiff and the nominated company for the purpose of cultivating palm oil on the said lands. A B

[4] Pursuant to the said oral arrangement, the plaintiff then executed sublease agreements in writing in respect of all of the K lands, the A lands, the B lands and the C lands to the companies nominated by the late Yap Kiew whose companies comprised of the second, third and fifth defendants. Messrs James Ghani & Co, advocates and solicitors, Kota Kinabalu prepared the sublease agreements. C

[5] All the subleases were for a period of 99 years and the rent payable was payable in one fixed amount payable at the time the sublease agreements were executed. The K lands were subleased to the fourth defendant under sublease agreements dated 1 January 1997 and 1 May 1997 respectively (refer to pp 325–332 and 334–339 of AB3) which contained subleases of part of the C lands as well. The A lands were subleased to the second defendant under sublease agreements, all dated 2 January 1995 (refer to pp 31–111 of AB2), the second defendant then transferred the subleases to the third defendant who then transferred the subleases to the fourth defendant. D E

[6] The B lands were subleased to the fifth defendant, (formerly called Siangyi Plantation Sdn Bhd), under sublease agreements dated 16 September 1997 and 6 July 1999 respectively (refer to pp 511–515 and 517–520 of AB3). The C lands were subleased to the fourth defendant under sublease agreements dated 1 January 1997, 1 May 1997 (refer to pp 325–332 and 334–339 of AB3) and 6 July 1999 (refer to pp 341–344 of AB3) respectively. The second, third and fourth defendants have been in occupation of the respective lands since the execution of the respective sublease agreements. F G

[7] The terms and conditions of the various leases and/or sublease agreements are identical, except for the commencement date of the relevant leases and/or subleases and the amount of rent is fixed as a lump sum amount. The recital of the various lease and/or sublease agreements stated that the plaintiff is the registered owner of the lands. Clause 1 provided that the lease and/or sublease is for 99 years from the date of the sublease, cl 2 provided for the payment of the rental for the whole 99 years in one lump sum and cl 3 provided for the payment of the lump sum payment of the rental upon the signing of the lease and/or sublease agreement. H I

[8] Subsequently, at the request of the late Yap Kiew, the plaintiff also

executed third party memorandam of charges of the A lands and the B lands in favour Bank Muamalat Malaysia Bhd for loans granted to the first to fifth defendants.

[9] After the death of the late Yap Kiew in May 2006, the plaintiff in July 2006 executed further third party memorandam of charges in respect of the A lands and the B lands in favour of RHB Islamic Bank Bhd for banking facilities granted to the defendants.

[10] The second to fifth defendants are all companies managed by the late Yap Kiew. They all shared the same business office at Block B, Lot 4 and 5, Bandar Kim Fung, Mile 4 Labuk Road, Sandakan. After the late Yap Kiew passed away, the second to fifth defendants were and still are managed by his children Mr Stewart Yap Phing Cern (DW1) and Ms Jessica Yap Fei Chien (DW2).

[11] The first defendant is a public company listed on the main board of the Kuala Lumpur Stock Exchange and wholly owned the third, fourth and fifth defendants. Mr Stewart Yap is the first defendant's chief executive officer and Ms Jessica Yap one of its executive directors. Both Stewart Yap and Jessica Yap are directors of the second, third, fourth and fifth defendants.

[12] On 21 Novemeber 2006, the plaintiff wrote to the board of directors of the first defendant, which letter was copied to Stewart Yap, Jessica Yap and one Luis Chin, asking for payment of the rent for his lands within 30 days without the plaintiff having to rely on his legal rights.

[13] The plaintiff then filed this suit against the defendants on 2 June 2010 after failing to receive the appropriate response.

BUNDLES OF DOCUMENTS

[14] The pleadings and bundles of document were agreed as to authenticity and were marked as follows:

(a) bundle of pleadings — BP;

(b) the plaintiff's bundles of documents — AB1;

(c) the first, second, third, fourth and fifth defendants bundles of documents Vol 1 — AB2;

(d) the first, second, third, fourth and fifth defendants' bundles of documents Vol 2 — AB3;

(e) the first, second, third, fourth and fifth defendants' supplementary bundles of documents — AB4; and

(f) the first, second, third, fourth and the fifth defendants' second supplementary bundles of documents — AB5.

AGREED ISSUES TO BE TRIED

[15] The agreed issues to be tried are as follows:

(a) whether the plaintiff is entitled to rescind the sublease agreements in respect of the A lands, the B lands and the C lands (Items i–xc of the statement of claim) entered into between the second and fifth defendants?;

(b) whether the lease agreements and the memorandum of subleases relied upon by the fourth defendant in respect of the K lands entered into between the plaintiff and the fourth defendant are valid to give the fourth defendant, a legal interest in the K lands, or are they voidable?;

(c) whether the plaintiff's claims in this suit are statute barred in accordance with the relevant provisions of the Limitation Ordinance (Sabah Cap 72)?; and

(d) whether the plaintiff has any cause of action against the first defendant?.

CONSIDERATION OF THE AGREED ISSUES TO BE TRIED

Issue (1)

Whether the plaintiff is entitled to rescind the sublease agreements in respect of the A lands, the B lands and the C lands (Items i–xc of the said statement of claim) entered into between the plaintiff and the second to fifth defendants?

[16] The only issue here, is whether the plaintiff is entitled to rescind the above sublease agreements as I find that there is no dispute that plaintiff did enter into the various sublease agreements and respective memorandam of sublease with the various defendants in respect of the various lands.

THE A LANDS

[17] As regards the A lands, particulars of which are set out at para 15 of the

statement of claim, which consisted of some 41 parcels of lands situated in the District of Labuk/Sugut which the plaintiff subleased to the second defendant, Sri Mosta Sdn Bhd.

[18] The relevant memorandam of sublease were duly executed by the plaintiff and registered in the relevant land office. The said lands are now in possession of the fourth defendant by virtue of transfer of sublease. The second, third and fourth defendants have been in possession and occupation of the A lands for more than 15 years now and that the fourth defendant had fully developed the said A lands into a oil palm plantation.

[19] As regards the lease agreements dated 2 January 1995 at pp 346–509 of AB3, which were duly executed both by the plaintiff and the second defendant, I find that it is not disputed that cll 2–3 of these lease agreements provided that rentals for the lease shall be paid by the second defendant as the lessee and that the same shall be paid '…upon signing of this lease'.

[20] I noted that the payment of the rentals for the various sublease and lease agreements are evidenced by payment voucher dated 28 December 1994, showing the payment of rentals at p 510 of AB3 and that the payment voucher was duly acknowledged by the plaintiff who did not deny signing the same. Thus I find that the plaintiff's case, in respect of the lands which is grounded substantially on, inter alia, the premise that he did not receive any rentals for the subleases, is without merits.

THE B LANDS

[21] The B lands consisted of some 17 parcels of lands situated in the District of Labuk/Sugut and the B lands were subleased by the plaintiff to the fifth defendant, Ladang Kluang Sdn Bhd (formerly known as Siangyi Plantation Sdn Bhd).

[22] As regards the memorandam of sublease at pp 113–144 of AB2, these were duly executed by the plaintiff and registered in the relevant land office. The fifth defendant had been in possession since the lands were subleased to them and they have developed the lands into an oil palm plantation. There is no dispute that the respective subleases had also been duly registered with the relevant land office.

[23] As regards lease agreements dated 16 September 1997 and 6 July 1999 at pp 511–515 and 517–520 of AB3, they were also executed both by the plaintiff and the fifth defendant. Clauses 2–3 of these lease agreements provided that rentals for the leases shall be paid by the fifth defendant as the lessee and that the same shall be paid upon signing of this lease. I find that the

payment of rental for the said lease agreements, were evidenced by the payment voucher dated 15 September 1997, found at p 516 of AB3 and by the payment voucher dated 2 July 1991 at p 521 of AB3, showing the payment of rentals and that the plaintiff had acknowledged receipt of the rental payments.

THE C LANDS

[24] These C lands are set out at para 15 of the statement of claim and consisted of some 90 parcels of lands situated in the District of Kinabatangan and were subleased by the plaintiff to the fourth defendant, Yapidmas Sdn Bhd.

[25] As regards the memorandam of sublease at pp 145–324 of AB2 which were also duly executed by the plaintiff and registered in the relevant land office. The fourth defendant had been in possession and occupation of the C lands for more than 13 years or so since they were subleased to them and the fourth defendant had also fully developed the said C lands into an oil palm plantation.

[26] I find that lease agreements dated 1 January 1997, 1 May 1997 (at pp 325–332 and 334–339 of AB3 respectively) and lease agreements dated 6 July 1999 at pp 341–344 of AB3, were duly executed both by the plaintiff and the fourth defendant. I noted that it is not disputed that cll 2–3 respectively of the lease agreements stated that the rentals for the lease shall be paid by the fourth defendant as the lessee and that same shall be paid '… upon signing of this lease.'

[27] I further find that there was payment of the rental for the lease agreements made and that this is supported by payment vouchers dated 1 January 1997 refer to p 333 of AB3, 3 May 1997 refer to p 340 of AB3, and 6 July 1999 refer to p 345 of AB3 respectively, evidencing the payment of rentals which the plaintiff had acknowledged receipt.

[28] The plaintiff further contended that he did not receive any rentals for the lease and sublease agreements and I noted that no letter of demand claiming for such unpaid rentals was produced. I find that the plaintiff's contention that he did not receive any rentals, an afterthought and without merits as this contention contradicted the various payment vouchers which he had signed, his conduct and silence at all material times.

[29] At pp 25–26 of the notes of proceedings, during cross-examination, the plaintiff said as follows:

Q137 Put it to you that if you indeed had not received the rentals you would have immediately demanded payments of the same?

A: A Because of trust, I didn't ask.

Q138 If indeed you had not received the rentals you would have said so in your letter at page 302 of AB-4 dated 21.11.2006?

A This letter is meant for their consideration.

B: Q139 But you did not mention anything about non-payment of rental, do you agree?

A Yes

Q140 If indeed you had not received the rentals you would not have demanded for the lease agreements to be varied as you mentioned in your letter dated 21/11/2006 at page 302 of AB-4?

C: A I wrote this letter in paragraph 5 because I never receive the money.

Q141 But there is no mentioned of that letter of non-received of the money. Agree?

D: A Yes

Q142 Would you also agree with me that the rentals are payable to you at the time you signed the respective Lease Agreement, because that is what the Lease Agreements provided.

E: A Yes.

[30] As regards the plaintiff's contention that the payments vouchers which he signed were blank and that because his signatures on some of the payments vouchers were different although he affirmed that they are his signatures, therefore this showed that they were signed at different times or different occasions. I find that even if indeed the plaintiff did sign the payment vouchers at different times and occasions, this does not in any way proved that the plaintiff did not receive the rentals for the various lease and sublease agreements.

[31] If indeed he did not receive any rentals which in total is a substantial sum, I would expect the plaintiff to request for payment of the rentals but he was silent for 15 years and he did not even request for payment of the rentals in his letter dated 21 November 2006. The plaintiff is educated and was a former civil servant and I would expect him to know how to assert his rights to demand the rental due to him. Further if indeed, he was not paid the rentals which in total is substantial, I would expect him not to assist or co-operate with the defendants further but instead he even executed the third party memorandam of charges, for the benefit of the defendants, on two occasions, using his lands as securities.

[32] In *PB Securities Sdn Bhd v Raja Abd Rahman bin Raja Mansor* [2010] 8 MLJ 770, the court held:

[35] It is trite law that in the absence of fraud or misrepresentation, the mere allegation that some particulars had not been filled in at the time, as alleged by the defendant in this case, when the document was signed would not absolve the person from liability and he would be bound by the terms of the document.

[33] In *Chai Then Song v Malayan United Finance Bhd* [1993] MLJU 128; [1993] 2 CLJ 640 at pp 642 James Foong J (as he then was) held:

Now turning to the fundamental point on this issue of the appellant executing on a deed of guarantee with relevant parts therein left blank and, where this similarly applies to the hire purchase agreement, the learned magistrate relied on the case of *Saunders v Angelia Building Society* [1971] AC 1004. *This case is better known as Gallie v Lee, a House of Lords decision which held that:*

a person who signs a document and parts with it so that it may come into other hands, has a responsibility, that of a normal man of prudence, to take care what he signs, which, if neglected, prevents him from denying his liability under the document according to its tenor.

Lord Wilberforce in his judgment on the aforesaid cases went further to say as follows:

I would add that the onus of proof in this matter rests upon him (that is) to prove that he acted carefully, and not upon the 3rd party to prove the contrary.
(Emphasis added.)

[34] In the case of *Thong Guan Co (Pte) Ltd v Lam Kong Co Ltd (No 2)* [1998] 7 MLJ 720, Abdul Malik Ishak J said:

At headnote [2]:

The defendants cannot blatantly deny receiving that sum in the face of the glaring evidence. The full sum had been paid and the defendants acknowledged receipt of the same. Clause 2 of the sale and purchase agreement clearly showed that the full purchase price had been disbursed even before the signing of exh P1.

At p 732:

The defendants pleaded and denied receipt of S$52,000, in regard to the sale of the 26 lots of land. The sale and purchase agreement clearly sets out the total consideration as S$52,000, calculated on the basis of S$2,000 per lot. *It is necessary to mention that by cl 2 of the sale and purchase agreement dated 28 July 1967, the defendants have expressly admitted receiving this sum, being the whole of the purchase price prior to the execution of the agreement Since I have held in the context of the plea of non est factum that the sale and purchase agreement was indeed signed by both parties, and it could not be avoided, it follows, as the night the day, that the defendants had received the whole of the purchase price …*
(Emphasis added.)

[35] I find that the plaintiff, until the filing of the action herein did not raise the issue of non-payment of rentals and that there was also no mention at all, of the non-payment of rentals in all his correspondence with the defendants. Thus I find that the plaintiff's contention that the he had not received any rentals is without basis and merits. It is simply hard to believe that over a period of 15 years, he never raised any objections or protest on the non payment of the rentals, which in total constituted a substantial sum.

[36] The plaintiff further contended that he was not given any copies of the relevant documents by the defendants and/or by the solicitors who were handling the various agreements and that when he went to see the said solicitors, Messrs James Ghani & Co, he was told that all the documents had been taken by the DW1 and DW2 including the soft copies. I find that even though if the plaintiff did not obtain any copies of the various lease and/or sublease agreement that he signed with the defendants, the plaintiff is still not entitled to rescind the various leases and/or subleases entered into, with the defendants. In any event the plaintiff could have initiated legal action to obtain the relevant agreements and/or documents from the said solicitors and the defendants and/or demanded for payment of rentals without the relevant agreements and documents.

[37] I agree with the contention of the defendants that delay is pursuing an action for rescission of a contract is fatal and I am guided by the Federal Court case of *Admiral Cove Development Sdn Bhd v Balakrishnan a/l Devaraj & Anor* [2011] 5 MLJ 309 where the court held:

> [24] … *We would agree that delay In pursuing an action for the rescission of a contract could be fatal* … In *Wilde and Another v Gibson* [1843–60] All ER Rep 494, a case which was referred to by Jenkins LJ in his judgment when making reference to sales of land, Lord Campbell said (at p 502):
>
> > If there be, in any way whatever, misrepresentation or concealment which is material to the purchaser, a court of equity will not compel him to complete the purchase, but where the conveyance has been executed, I apprehend, My Lords, that a court of equity will set aside the conveyance only on the ground of actual fraud. There would be no safety for the transactions of mankind if, upon a discovery being made at any distance of time of a material fact not disclosed to the purchaser of which the vendor had merely constructive notice, a conveyance which had been executed could be set aside.
>
> At para [23]:
>
> > Further, there was a delay of more than four years before the respondents decided to pursue the action for rescission. A case on point, with regard to delay, is *Leaf v International Galleries* [1950] 2 KB 86. The facts of the case were that in March 1944, the buyer bought from the sellers an oil painting of Salisbury Cathedral which was represented to him as a painting by Constable, a representation which

was held to be one of the terms of the contract. In 1949 he found that the picture was not a Constable. The buyer then claimed for the rescission of the contract on the ground that there had been an innocent misrepresentation. *The court held that the claim was not competent because the buyer had lost the right to reject on that ground that there was a five years delay when he claimed for the rescission and that was unreasonable.* In his judgment, Jenkins LJ said (at pp 695–696):

So far as dealings on land are concerned there is a considerable body of authority to the effect that rescission on the ground of innocent misrepresentation will not be allowed after conveyance. For instance, there are the observations (1 HL Cas 632) of Lord Campbell to that effect in *Wilde v Gibson* (1848) 1 HL Cas 605), *and the doctrine has also been applied to leases in Angel v Jay* ([1911] 1 KB 666) … (Emphasis added.)

[38] In the premises, I find that the plaintiff had failed to establish his case that he is entitled to rescind the various lease agreements executed with the various defendants.

ISSUE (2)

Whether the lease agreements and the memorandum of subleases relied upon by the fourth defendant in respect of The K Lands entered into between the plaintiff and the fourth defendant is valid to give the fourth defendant a legal interest in the K lands or are they voidable?

[39] As regards the K lands, the plaintiff contended that there is no sublease agreements or memorandam of sublease. However, at all material times the plaintiff was aware of the defendants' occupation and development of the said lands including the K lands into oil palm plantations but there was no objection or protest from the plaintiff, nor was there any attempt to evict the defendants from the said lands. The plaintiff further contended that the lease agreements and the memorandam of sublease entered into between the plaintiff and the defendant is invalid and unenforceable.

[40] I find that the plaintiff had knowledge of both the sublease agreements and the memorandam of sublease as these documents were discovered both prior and at that time of the defendants' application to strike out the plaintiff's action.

[41] The memorandam of sublease executed by the plaintiff in favour of the 4th defendant can be found at pp 1–30 of AB2 and they have been duly registered in the relevant land office. The plaintiff contended that this is defective, because it is not dated. I agree with the contention of the defendants

that this particular matter was not pleaded and that the pleaded case of the plaintiff is that the defendants had unlawfully trespassed into the K lands.

[42] I am guided by the Federal Court case of *RHB Bank Bhd (substituting Kwong Yik Bank Bhd) v Kwan Chew Holdings Sdn Bhd* [2010] 2 MLJ 188, where the Federal Court said:

> [33] Second, the proposition of the Court of Appeal was not even pleaded by the respondent. The respondent's cause of action against the appellant was for breach of contract. Nowhere in the respondent's pleading, expressly or by implication, can we detect a claim for breach of a joint venture agreement arising out of a fiduciary duty placed upon the appellant in the capacity as principal of an agent. *It is a cardinal rule in civil litigation that the parties must abide by their pleadings.* This is trite as can be seen from the decision of this court in *Menah Sulong v Lim Soo & Anor* [1983] 1 CLJ 26 where Ong Hock Thye CJ said:
>
> > I think it is necessary in this case to emphasise once again that the courts should give their decision in strict compliance with the pleadings. As Lord Radcliffe said in *Esso Petroleum Co Ltd & Anor v Southport Corporation* [1956] 2 WLR 81 at p 91:
> >
> > > If an appellate court is to treat reliance as pedantry or mere formalism I do not see what part they play in our trial system.
>
> [34] In fact, the Court of Appeal itself has reiterated this in *Amanah Butler (M) Sdn Bhd v Yike Chee Wah* [1997] 1 MLJ 750; [1997] 2 CLJ 79 where Gopal Sri Ram JCA (as he then was) said:
>
> > It is trite law that a party is bound by its pleadings
>
> [35] *On this, we would like to add that it is not the duty of the court to invent or create a cause of action or a defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other. The parties should know best as to what they want and it is not for the court to pursue a cavalier approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court would be accused of making laws rather than applying them to a given set of facts.*
> (Emphasis added.)

[43] Further in the Supreme Court case of *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152, His Lordship Gunn Chit Tuan SCJ as he then was) said at p 154:

… and reference was made to *Janagi v Ong Boon Kait* in which Sharma J (as he then was) had made observations on the function of pleadings and the duty of courts to follow rules procedure and practice. We agreed with the following passage in the judgment of the learned Judge in that case in which His Lordship stated:

> The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact, it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of a suit should be confined to the pleas on which the parties are at variance."
> (Emphasis added.)

[44] In the premises, I find that the lease agreements and the memorandum of subleases in respect of the K lands are valid and subsisting.

ISSUE [3]

Whether the plaintiff's claims in this suit are statute barred in accordance with the relevant provisions of the Limitation Ordinance (Sabah CAP 72)?

[45] As stated earlier, cll 2–3 of all the respective sublease agreements, provided for the quantum of the rentals due and payable to the plaintiff by the respective defendants. Clause 3 expressly provided that the said rentals shall be paid upon the signing of the respective sublease agreements.

THE A LANDS

The sublease agreements are dated 2 January 1995. Clauses 2–3 of these agreements provided that the rentals shall be paid upon the signing of the agreements. For the purpose of computing as to when the cause of action for such breach of the sublease agreement arises, it would be pertinent to ascertain when the defendants failed to pay the rentals. The plaintiff had contended that he was never paid the rentals. Since the date of the sublease agreements is 2 January 1995 and the plaintiff only commenced this action on 2 June 2010, some 15 years after the cause of action arose, I find that the plaintiff was caught by Item 93 of the Sabah Limitation Ordinance. I further find that the plaintiff's claim for the recovery of immovable property, is also caught by Items 108 or 112 of the Limitation Ordinance.

THE B LANDS

The sublease agreements were dated 16 September 1997 and 6 July 1999 respectively. Clauses 2–3 of the sublease agreements also provided that the

rentals shall be paid upon the signing of the sublease agreements. If according to the plaintiff's contention that the defendants failed to pay the rentals as alleged then the cause of action would have risen on or about the dates of the sublease agreements that is on 16 September 1997 and 6 July 199 respectively. The plaintiff only commenced this action on the 2 June 2010, some 13 years after the cause of action arose and thus is clearly caught by Items 93, 108 and 112 of the Sabah Limitation Ordinance.

THE C LANDS

The sublease agreements were dated 1 January 1997, 1 May 1997 and 6 July 1999 respectively. Clauses 2–3 of the sublease agreements provided that the rentals shall be paid upon the signing of the agreement. Therefore, if the plaintiff contended that the defendants had failed to pay the rentals then the cause of action would have risen on or about the respective dates of the sublease agreements. The plaintiff only commenced this action on the 2 June 2010, some 13 years after the cause of action arose and thus is also clearly caught by the relevant provisions of the Sabah Limitation Ordinance.

THE K LANDS

The sublease agreements were dated 1 January 1997 and 1 May 1997 respectively. Clauses 2–3 of the sublease agreements provided that the rentals shall be paid upon the signing of the sublease agreement. Since the plaintiff contended that the defendants have failed to pay the rentals, then the cause of action would have arisen on or about the date of the agreements or soon thereafter. The plaintiff only commenced this action on the 2 June 2010, some 13 years after the cause of action arose which is also caught by the relevant provisions of the Sabah Limitation Ordinance.

[46] I find that the plaintiff had not adduced any credible evidence, to prove that he had not received any rentals. It is pertinent to note that the plaintiff did not deny that he did not sign the relevant payment vouchers. It is important to note that the said payment vouchers and the relevant sublease agreements and lease agreements are contemporaneous documents executed by both the plaintiff and the relevant defendants at the material times. The plaintiff had full knowledge that the second to the fifth defendants had been occupying the respective lands and developed them into oil palm plantation. I would expect the plaintiff to object, protest or lodge claims against the defendants if there was non-payment of the rentals as the plaintiff contended.

[47] I find that the plaintiff's action herein 'for compensation for trespass upon immovable property' for the K lands is also statute barred by the Sabah Limitation Ordinance, in particular by Item 30 of the Schedule thereto as the action was not instituted within three years from the date when the cause of action arose.

[48] As regards the plaintiff's claim for rescission of the contract and for various declaration and damages, I also find that the plaintiff's claim is statute barred by virtue of Item 93 of the Sabah Limitation Ordinance as the action was not instituted within three years from the date when the cause of action arose.

[49] As regards the plaintiff's claim for breach of an oral agreement made between the plaintiff and one Yap Kiew 'in about 1994 to 1996', I find that the plaintiff at para 19 of the statement of claim had pleaded that the said Yap Kiew died in about June 2006. If indeed, there is a breach of the oral agreement then I would expect the plaintiff to claim against the estate of the late Yap Khiew and not the defendants herein as the oral agreement was between him and the late Yap Khiew. In any event, I find that the plaintiff's said claim is statute barred by virtue of Item 94 of the Sabah Limitation Ordinance as the action was not instituted within three years from the death of the said late Yap Kiew in the year, 2006.

[50] I also find that the plaintiff's claim herein for the arrears of rent (see prayer 12 in the statement of claim) is statute barred by virtue of Item 95A of the Sabah Limitation Ordinance as I find that for claims for arrears of rent, the limitation period is six years. Since the writ of summons and the statement of claim herein were only filed on 2 June 2010, which is after the expiry of the six years' limitation period, this particular claim is thus statute barred.

[51] I also find that the plaintiff's action herein is statute barred by virtue of Item 95 of the Sabah Limitation Ordinance as it was grounded on claims for breach of a contract in writing and the relevant limitation period is six years by virtue of Item 95 of the Schedule to the Sabah Limitation Ordinance.

[52] Addressing the plaintiff's contention that there had been fraudulent concealment of all the sublease agreements and other documents necessary to establish the plaintiff's right to rescind the very sublease agreements that were concealed and that s 18 of the Limitation Ordinance is applicable. I find that there is no such evidence and further the plaintiff did not plead this particular issue.

[53] Section 18 of the Sabah Limitation Ordinance states as follows:

> When any person having a right to institute a suit has by means of fraud been kept from the knowledge of such right of title on which it is founded, or where any documents necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit —
>
> (a) against the person guilty of the fraud or accessory thereto, or

A (b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

B

[54] Section 18 of the Sabah Limitation Ordinance was considered by the Court of Appeal in the case of *Abdul Manaf bin Ahmad v Mohd Kamil Datuk Hj Mohd Kassim* [2011] 4 MLJ 346; [2009] 2 CLJ 121, where Gopal Sri Ram JCA
C (as he then was) at p 353 (MLJ); pp 131 and 132 (CLJ) held:

[9] Rustomji on the *Law of Limitation and Adverse Possession* (7th Ed), a leading work on the subject, has this comment to make (at p 306 of the text) on the Indian equipollent of s 18 (viz s 17 of the Limitation Act 1963):

D *There must be some affirmative act designed to prevent, and which does prevent, the discovery of the cause of action. Mere silence or passiveness (there being no fiduciary relation or act of the party calculated to deceive or lull inquiries) is not fraudulent concealment.*

E If you apply that to the present case, you will see that there was no affirmative act on the part of the defendant designed to prevent the discovery of the right of action. The defendant merely remained silent at the general meeting. On the authorities this is insufficient In the first place the parties do not stand in a fiduciary position to each other. In the second place, there was no act on the part of the defendant to deceive or lull the plaintiff into making inquiries into the facts relevant to his right
F to bring an action for libel.

[10] The plaintiff's argument that he was unaware of the identity of the person who had defamed him and could not therefore institute proceedings within the limitation period is equally without merit. Upon his arrest he could have applied for
G and obtained from the police a copy of the first information report in the case. From it he could have quite readily ascertained that it was the defendant who had libelled him. The instant plaintiff did not therefore act with reasonable diligence in ascertaining the defendant's identity within the prescribed limitation period. It may be added that, absent fraud on the part of the defendant, it is no answer to a plea of
H limitation for a plaintiff to say that he was unaware that he had a cause of action during the relevant period prescribed by the statute. See, *Ardikappa v Kadappa* (1916) 36 IC 418; *Lalta Singh v Muthur Upadhia* ILR 6 Luck 374. That principle, in my judgment, applies with full force to the facts of the present instance. (Emphasis added.)

I

[55] I find that there was no evidence of any affirmative act on the part of the defendants, designed to prevent the discovery of the right of action nor was there any act on the part of the defendants to deceive the plaintiff, into making inquiries into the facts relevant to his right to bring his action. I also find that

the plaintiff at all material times, had the means and opportunity of obtaining the various documents from the land office, the said solicitors and the defendants which he now claimed, had been concealed by the defendants. The plaintiff has more than 13 years to obtain the sublease agreements and other relevant documents but he did not. Further the plaintiff is an educated person and a former civil servant and ought to have taken actions to obtain copies of the sublease agreements and other relevant documents, the existence of which he was fully aware of. As such, I hold that the plaintiff cannot rely on s 18 of the Limitation Ordinance.

[56] I am guided by the case of *T Thommen Thomas v John Simon & other* (1957) AIR TC 153, which held as follows:

> The only surviving question is whether, if art 166 is to be applied. Section 18 of the Limitation Act could be invoked by the second defendant so as to avoid the bar of limitation. Here again it has to be observed that the second defendant's application does not contain the necessary allegations which can justify the invoking of s 18 at all. It is not alleged for instance that the second defendant had been kept out of the knowledge of his right to file the petition to set aside the sale on account of a fraud of the party against whom he had file the petition.
>
> *Section 18 of the Limitation Act requires not merely proof of fraud to vitiate such sale but also proof of fraud which kept the judgment-debtor in ignorance of his right to make an application for setting aside the sale. It is incumbent on the applicant therefore to distinctly allege any particular of fraud by which he had been kept from knowledge of his right to make the application against the decree-holder specifically and with detailed particulars.*
> (Emphasis added.)

[57] In *The Great Eastern Life Insurance Co Ltd v Indra Janardhana Menon (representing the estate of the deceased, NVJ Menon)* [2006] 2 MLJ 209, the Federal Court, at p 215, held:

> The law on, when a cause of action accrues is already well settled and very much entrenched in our jurisprudence which is this. A cause of action founded on contract accrues on the date of its breach and that time begins to run from that breach (see the case of *Nasri v Mesah* [1971] 1 MLJ 32 which followed *Board of Trade v Cayzer, Irvine & Co* [1972] AC 610.

[58] Further in *Credit Corp (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409; [1991] 2 CLJ 871; [1991] 1 CLJ (Rep) 69, Hashim Yeop A Sani J said:

> The doctrine of limitation is said to be based on two broad considerations. Firstly there is a presumption that a right not exercised for a long time is non-existent. The other consideration is that it is necessary that matters of right in general should not be left too long in a state of uncertainty or doubt or suspense.

The limitation law is promulgated for the primary object of discouraging plaintiffs from sleeping on their actions and more importantly, to have a definite end to litigation. This is in accord with the maxim interest reipublicae ut sit finis litium that in the interest of the State there must be an end to litigation. The rationale of the limitation law should be appreciated and enforced by the courts.

ISSUE (4)

Whether the plaintiff has any cause of action against the first defendant?

[59] I find that that the first defendant had no contractual nexus or otherwise with the plaintiff. From the evidence adduced and pleadings filed, they showed that all the sublease agreements were entered into between the plaintiff and the second to the fifth defendants. The relevant lands were occupied and developed by the second to the fifth defendants respectively and the first defendant was neither in occupation nor possession of the said lands.

[60] At p 27 of notes of proceedings, the plaintiff confirmed as follows:

Q155	Put to you that there is no agreement whether oral or writing what so ever between yourself and the first defendant at any time. Do you agree?
A	Yes
Q156	Put to you that the first defendant is not in occupation in any of the K lands, A lands, B lands and C lands, the subject matter of this claim?
A	Maybe.

[61] Thus I find that the plaintiff has no cause action against the first defendant as there is no evidence that the first defendant was in occupation or in possession of the said lands.

ORDER

[62] In the light of the above, I dismiss the plaintiff's case against the defendants with costs.

Plaintiff's case dismissed with costs.

Reported by Ashgar Ali Ali Mohamed